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OCT 26 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

SUPREME COURT OF ARIZONA

Inquiry concerning Judge	)	Supreme Court No. JC-10-0002
)	
Clyde Andress	)	Commission No. 10-099
Lake Havasu City Municipal Court)	
Mohave County)	
State of Arizona	)	FILED 10/26/2010
Respondent.)	
_____)	

ORDER

This matter having come before the Commission on Judicial Conduct, it having duly rendered and filed its recommendation, and all applicable rights to object to or petition for modification of the recommendations having been waived by Respondent, and the Court having no further responsibility for review pursuant to Rule 29(g) of the Rules of Procedure for the Commission on Judicial Conduct,

IT IS ORDERED that **CLYDE ANDRESS**, Lake Havasu City Magistrate, is hereby censured for violations of the Code of Judicial Conduct in accordance with the conditions set forth in the Recommendation and the Stipulated Resolution, which are attached hereto.

DATED this ____ day of October 2010.

Rachelle M. Resnick
Clerk of the Court

TO:
Judge Clyde Andress, Respondent
Jennifer Perkins, Disciplinary Counsel, Commission on Judicial Conduct
E. Keith Stott, Jr., Executive Director, Commission on Judicial Conduct
Barbara Wanlass, Clerk of the Commission on Judicial Conduct
Jode Ottman, West Publishing Company, Editorial Department, D3-40 #4467
Lexis-Nexis

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

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OCT 07 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	Commission No. 10-099
)	
CLYDE ANDRESS)	
Lake Havasu City Municipal Court)	
Mohave County	)	NOTICE OF FILING WITH
State of Arizona	)	THE SUPREME COURT
Respondent)	
)	


PLEASE TAKE NOTICE that the Commission's Recommendation in the above-entitled case, together with all other pertinent pleadings contained in the record, were filed on this date with the Clerk of the Arizona Supreme Court, 1501 W. Washington, Suite 402, Phoenix, Arizona 85007. Copies of the pleadings, along with this notice, were promptly served on Respondent.

The Commission accepted a stipulated resolution in this case in the best interest of the public and pursuant to guidance provided in previous cases in which the Commission was encouraged to pursue alternative resolutions. *In Re Braun*, 180 Ariz. 240, 242, 883 P.2d 996, 998 (1994); *In Re Garcia*, 180 Ariz. 294, 296, 884 P.2d 180, 182 (1994).

The Clerk of the Supreme Court is advised that the Respondent has waived the right in Rule 29(c) of the Rules of the Commission on Judicial Conduct to petition the Court to modify or reject the Commission's recommendations and the right to request oral argument. This matter, therefore, may be deemed submitted pursuant to Rule 29(e).

DATED this 7th day of October 2010.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Copies of this notice were delivered and mailed
this 7th day of October 2010 to:

Clyde Andress, Respondent
Lake Havasu City Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, AZ 86403

Jennifer M. Perkins
Disciplinary Counsel
Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, Arizona 85007

By: Barbara W. Winters
Clerk of the Commission

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

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SEP 03 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	
	)	Case No. 10-099
JUDGE CLYDE ANDRESS)	
City Magistrate)	
Lake Havasu City Municipal Court	)	NOTICE OF INSTITUTION OF
Mohave County	)	FORMAL PROCEEDINGS
State of Arizona)	
)	
Respondent.)	

TO JUDGE CLYDE ANDRESS:

You are hereby notified that the Commission on Judicial Conduct has instituted formal proceedings against you in accordance with Rule 24(a) of the Rules of the Commission on Judicial Conduct ("Rule") to inquire into the charges specified in the attached Statement of Charges. You are also notified that a hearing will be held before the Commission to determine whether or not these charges constitute grounds for your censure, suspension, removal from office as a judge, or other appropriate discipline as provided in Article 6.1 § 4 of the Arizona Constitution.

You are further notified that:

1. Jennifer Perkins, Attorney at Law, will act as disciplinary counsel for the Commission in this matter, to gather and present evidence to a hearing panel on the charges, pursuant to Rule 27.
2. You have the right, pursuant to Rule 25(a), to file a written response to the charges made against you within 15 days after personal service of this notice upon you or within 20 days of the date this notice is mailed. An original signed copy of the response must be filed in the Commission's office by 5:00 p.m. on the required date.


3. Upon receipt of your response, or upon expiration of the time in which a response must be filed, the Commission will open and maintain a public file containing the Notice of Institution of Formal Proceedings, the Statement of Charges, and all subsequent pleadings filed with the Commission. This file and the formal hearing in this case shall be open to the public in accordance with Rule 9(a).

4. You have the right to be represented by counsel, to examine and cross-examine witnesses and to require the issuance of subpoenas for the attendance of witnesses or for the production of any evidentiary matters necessary for your defense.

5. During the pendency of these proceedings, you or the Commission may refer to or use prior cases, if any, pertaining to previous complaints or discipline for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration.

Dated this 2nd day of September 2010.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Copies hand-delivered on
September 3, 2010, to:

Judge Clyde Andress
City Magistrate
Lake Havasu City Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, AZ 86403

Jennifer M. Perkins
Disciplinary Counsel
Commission on Judicial Conduct

By: 
Keith Stott

Jennifer M. Perkins
Disciplinary Counsel (Bar #023087)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

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SEP 02 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	
)	
Judge Clyde Address	)	Case No. 10-099
Lake Havasu City Municipal Court)	
Mohave County	)	STATEMENT OF CHARGES
State of Arizona)	
Respondent.)	

An investigative panel composed of members of the Commission on Judicial Conduct (Commission) has determined that there is reasonable cause to commence formal proceedings against Judge Clyde Address (Respondent) for misconduct in office. This statement of charges sets forth the Commission's jurisdiction and specifies the nature of the alleged misconduct.

JURISDICTION

1. The Commission has jurisdiction of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution.
2. This Statement of Charges is filed pursuant to Rule 24(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).

3. Respondent has served as a municipal court judge in Lake Havasu City, which is in Mohave County, since at least 1998 and was serving in his capacity as a judge at all times relevant to the allegations contained herein.

4. As a judge, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

PRIOR DISCIPLINE

5. Closed files pertaining to discipline of Respondent may be referred to and used by the Commission or by Respondent for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the judge pursuant to Commission Rule 22(e).

6. Consistent with the requirements of Commission Rule 22(e), undersigned counsel notified Respondent on August 27, 2010, that his prior disciplinary history may be referenced.

Private Warning

7. In 2002, Respondent initiated an ex parte communication with a counselor retained by one party for the purpose of obtaining factual information related to the case. On February 11, 2003, the commission sent Respondent a private admonishment to avoid improper ex parte communications in the future, regardless of how well-intentioned they may be.

Private Advisory

8. In 2005, Respondent contacted the police department on behalf of a defendant who indicated he was having difficulty getting copies of records. Respondent later lost his temper with the defendant, ordering him out of the courtroom and threatening jail time.

9. On July 11, 2006, the commission sent Respondent a private letter advising him to remember his obligation to remain patient, dignified, and courteous with litigants. The

commission also advised Respondent to avoid interceding with an agency on a litigant's behalf because even though the judge's motive was commendable his actions could give the appearance of bias or impropriety.

Reprimand

10. In 2006, the judge became frustrated with an attorney who was confused about scheduling and refused to allow the attorney to make an objection record. Instead, Respondent threatened to hold the attorney in contempt of court if he continued speaking.

11. On July 11, 2007, the commission issued a public reprimand based on Canon 3B(4), the judge's obligation to be patient, dignified, and courteous with litigants, and Canon 3B(7), requiring judges give litigants the right to be heard.

FACTUAL BACKGROUND

12. The complainant, Arlene Keirns, is the president of a local girls' softball league. Keirns and Shelly Somishka, the vice president, pursued injunctions against Dave Radine, a coach and parent of one of the players, to keep him off the fields as a coach and away from them personally. In response, Radine alleged that Keirns and Somishka were the ones harassing him and that in retaliation they kicked his daughter off one of the teams. The women claimed that they removed his daughter from the team consistent with league policy.

13. Respondent presided over the injunction hearing on March 11, 2010, and upheld injunctions against Radine on behalf of both Keirns and Somishka. Respondent also ordered the women to reinstate Radine's daughter to the team she had originally joined. Radine did not request an order reinstating his daughter and the only issue properly before the court was whether the injunctions against harassment should remain in place.

14. After the March 11 hearing, Keirns attempted several times to get a copy of Respondent's written order only to be told by court staff there was no such order. At a later hearing, however, it appeared that a written order was available.

15. After the initial hearing, and with no available written order regarding the daughter, the league did not reinstate her. Radine's wife then wrote a letter to the judge who held an additional hearing on March 22 to determine whether Keirns and Somishka were in violation of his order. The women sought a continuance to obtain counsel, and a further hearing occurred on March 30.

16. At the March 30 hearing, Respondent explained that he had done "some digging" and contacted at least one coach in the softball league as well as the city manager and other city officials regarding the case. Respondent also specifically called and directed a coach to reinstate the daughter regardless of what the league decided to do. Respondent's other ex parte communications were for the purpose of factual investigation regarding the league's authority and use of city park space.

17. When he learned of these communications at the March 30 hearing, the attorney representing Keirns and Somishka noted that none of these other sources were made available to the parties or subject to cross-examination. Respondent and the attorney engaged in some discussion on the record and then the judge asked everyone to step outside while he shut off the recording and held a discussion off the record with the attorney. The purpose of this off-the-record conversation was to "bring [the attorney] up to speed."

18. Thereafter, the parties went back on the record and discussed setting an evidentiary hearing. Radine indicated he would like to hire counsel for that hearing. Respondent advised him that he should save the money and wait to see what happens before hiring counsel.

19. Before the evidentiary hearing, Respondent contacted the parties, quashed the injunctions, and cancelled future hearings. Thereafter, Respondent followed up with the parks director to determine what happened with Radine's daughter and the softball team, and also whether problems remained in the league.

COUNT I IMPROPER EX PARTE COMMUNICATIONS

20. Rule 2.9 (A) of the Code forbids a judge from initiating, permitting, or considering communications made outside the presence of the parties or their lawyers concerning a pending or impending matter.

21. Rule 2.9 (C) of the Code forbids a judge from investigating the facts in a matter independently, and requires that a judge consider only the evidence presented and any facts that may be judicially noticed.

22. Respondent violated the Code by intentionally engaging in multiple ex parte communications regarding the substance of a pending matter and intentionally conducting his own factual investigation. Specifically, Respondent's communications with league coaches, the city manager, and other city officials, as well as his "off the record" conversation with counsel in the case, all constituted improper ex parte communications.

23. Respondent's actions also constitute a violation of the Arizona Constitution, which forbids "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Article 6.1, § 4.

COUNT II INCOMPETENCE IN THE LAW

24. Rule 2.5 (A) requires judges to perform judicial duties competently and Comment 1 notes that "Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office."

25. Respondent repeatedly acted outside the scope of his judicial capacity in the underlying case in an effort to solve various problems, none of which were properly before him. First, Respondent sought to correct what he believed was an improper act by the softball league in removing a player. No party requested an order reinstating the girl to her team, and the league itself was not a party to any proceeding in the court. Respondent thus did not have authority to issue an order to the league directing it to take certain actions. Second, the case before the judge involved only injunctions against harassment and no party at any time raised the issue of a legal claim against the city based on the league's apparent retaliation against Radine's daughter. The judge identified this issue himself, and then sought improperly to "solve" it and prevent a lawsuit against the city, which is outside the scope of judicial duties and suggests the judge mistakenly believes it is his role to protect the city from legal claims.

26. Through his actions in going repeatedly and intentionally beyond the scope of his judicial authority and role, Respondent violated the Arizona Constitution, which forbids


“wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Article 6.1, § 4. Respondent's actions also violated Rule 2.5 (A) of the Code.

REQUESTED RELIEF

WHEREFORE, the Commission, upon conclusion of a hearing and a finding of good cause, may recommend to the Supreme Court that Respondent be publicly censured, suspended or removed from judicial office; that costs be assessed against Respondent pursuant to Commission Rule 18(e), and that the court grant such other relief as may be deemed appropriate.

Dated this 2nd day of September 2010.

COMMISSION ON JUDICIAL CONDUCT


Jennifer M. Perkins
Disciplinary Counsel

Copies of this pleading hand-delivered
at the commission's office
on September 3, 2010, to:

Hon. Clyde Andress
Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, AZ 86403

FILED

SEP 20 2010

**ARIZONA COMMISSION ON
JUDICIAL CONDUCT**

Jennifer M. Perkins
Disciplinary Counsel (Bar #023087)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning)	
)	
Judge Clyde Andress	)	Case No. 10-099
Lake Havasu City Municipal Court)	
Mohave County	)	STIPULATED RESOLUTION
State of Arizona)	
Respondent.)	

COME NOW Judge Clyde Andress, Respondent, on his own behalf, and Jennifer Perkins, Disciplinary Counsel for the Commission on Judicial Conduct (Commission), and hereby submit the following proposed resolution of this case pursuant to Rule 30 of the Commission's Rules.

JURISDICTION

1. The Commission has jurisdiction over these matters pursuant to Article 6.1 of the Arizona Constitution.

2. Respondent has served as a municipal court judge in Mohave County since November 1997 and was serving in this capacity at all times relevant to the allegations contained herein.

3. As a municipal court judge, Respondent is and has been subject to the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

BACKGROUND

4. On September 2, 2010, Disciplinary Counsel filed a Statement of Charges against Respondent after an investigative panel found reasonable cause to begin formal proceedings. The Statement of Charges is hereby incorporated into this stipulated agreement in its entirety.

ADMISSION

5. Respondent admits the facts contained in the Factual Background of the Statement of Charges. He further concedes that these facts support the charges of judicial misconduct delineated in Counts I and II of the Statement of Charges.

AGREED UPON SANCTION

6. The parties agree that Respondent's misconduct in the underlying case warrants a formal sanction. Because Respondent previously received an informal public reprimand and two informal private comments for related conduct, the parties agree that the appropriate sanction for this matter is a public censure.

OTHER TERMS AND CONDITIONS

9. This agreement, if accepted by the hearing panel, fully resolves all issues raised in the Statement of Charges and may be used as evidence in later proceedings in accordance with the Commission's Rules. If the hearing panel does not accept this agreement as a full resolution, then the admissions made by Respondent will be withdrawn, and the matter will be set for hearing without use of this agreement.

10. Respondent waives his right to file a Response to the Statement of Charges, pursuant to Commission Rule 25(a).

11. Pursuant to Commission Rule 28(a), both parties waive their right to appeal the charges at issue in this matter, including the appeal procedures set out in Commission Rule 29.

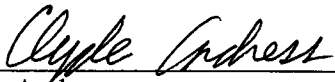
12. Both parties agree not to make any statements to the press that are contrary to the terms of this agreement.

13. Both parties will pay their own costs and attorneys' fees associated with this case.

14. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms.

15. This agreement constitutes the complete understanding between the parties.

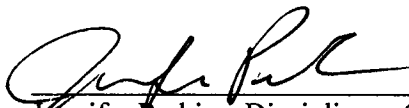
SUBMITTED this 15 day of September, 2010.



Clyde Address
Respondent

9/15/2010

Date Signed



Jennifer Perkins, Disciplinary Counsel
Commission on Judicial Conduct

9/20/2010

Date Signed

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

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OCT 07 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning)	
	)	Case No. 10-099
JUDGE CLYDE ANDRESS)	
Lake Havasu City Municipal Court)	
Mohave County	)	RECORD OF APPOINTMENT
State of Arizona	)	OF HEARING PANEL
)	
Respondent)	
)	

Acting pursuant to Rules 3(f) and 27(a) of the Rules of the Commission, Judge J. William Brammer, Jr. chair of the commission, appointed Judge Louis Frank Dominguez to serve as the presiding member of the hearing panel in the above-entitled proceeding and designated the following as members of the panel: William Brammer, Sherry Geisler, Michael Miller, and Lawrence Winthrop as judge members, Sheila Polk as an attorney member, and Lloyd Claycomb and Angela Sifuentes as public members. The appointments were made on July 27, 2010.

DATED this 7th day of October 2010.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Copies delivered by mail or in person
on October 7, 2010, 2010, to:

Clyde Andress, Respondent
Lake Havasu City Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, AZ 86403

Jennifer M. Perkins
Disciplinary Counsel
Commission on Judicial Conduct

by: Barbara Wantless
Clerk of the Commission

Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007-3327
602-452-3200

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ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

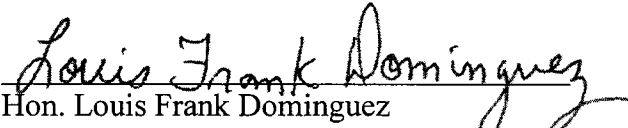
Inquiry concerning Judge	)	Case No. 10-099
)	
CLYDE ANDRESS)	
Lake Havasu City Municipal Court	)	ACCEPTANCE OF STIPULATED
Mohave County	)	RESOLUTION AND ORDER
State of Arizona)	
Respondent)	
)	

The duly appointed hearing panel of the Commission on Judicial Conduct in the above-entitled case hereby accepts the Stipulated Resolution signed by the Respondent for the following reasons: The issues set forth in the Statement of Charges have been adequately resolved; the parties agree that the Respondent's conduct in the underlying case warrants a formal sanction; and the prompt and expeditious resolution of this case is in the best interests of the public and the judiciary. Therefore, pursuant to Rule 30,

IT IS HEREBY ORDERED that the executive director of the Commission shall promptly prepare and transmit the Commission's Recommendation, along with the official record of these proceedings, to the Supreme Court as required by Rule 29.

DATED this 7th day of October 2010.

COMMISSION ON JUDICIAL CONDUCT


Hon. Louis Frank Dominguez
Presiding Member of the Hearing Panel

Copies of this pleading were delivered via fax
and mail this 7th day of October 2010 to:

Clyde Andress, Respondent
Lake Havasu City Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, AZ 86403

Jennifer M. Perkins
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

By: Barbara Warless
Clerk of the Commission

Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200
Facsimile: (602) 452-3201

FILED

OCT 07 2010

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge)	
	)	Supreme Court No. JC-10-002
CLYDE ANDRESS)	
Lake Havasu City Municipal Court	)	Commission Case No. 10-099
Mohave County)	
State of Arizona	)	RECOMMENDATION
)	
Respondent)	

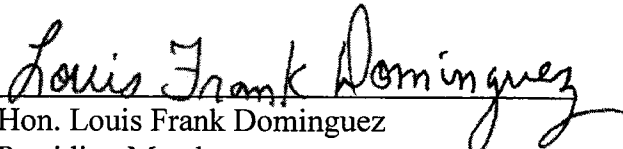
On September 2, 2010, the Commission on Judicial Conduct ("Commission") filed a Statement of Charges against Municipal Court Judge Clyde Andress ("Respondent") following a finding of reasonable cause by a three-member investigative panel assigned to oversee the investigation in this case. Simultaneously, the Commission chairperson appointed an eight-member hearing panel to hear and take evidence in the case and designated the undersigned as the presiding member of the panel.

On September 20, 2010, Counsel for Respondent and Disciplinary Counsel subsequently submitted a Stipulated Resolution ("Resolution") to the hearing panel in which Respondent agreed to accept a public censure for misconduct in office. On September 20, 2010, the hearing panel unanimously voted via e-mail to accept the Resolution. As part of the Resolution, the Respondent waived his right to appeal and all other procedural rights set forth in Rule 29 of the Rules of the Commission on Judicial Conduct.

All of the conditions in the Resolution having been met, the hearing panel now recommends to the Arizona Supreme Court that the Respondent be censured for misconduct in office.

RESPECTFULLY SUBMITTED this 7th day of October 2010.

FOR THE HEARING PANEL


Hon. Louis Frank Dominguez
Presiding Member

Copies of this pleading were delivered and
mailed this 7th day of October 2010 to:

Judge Clyde Andress, Respondent
Lake Havasu City Municipal Court
2001 College Drive, Suite 148
Lake Havasu City, 86403

Jennifer Perkins
Disciplinary Counsel
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

By: 
Clerk of the Commission